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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

FILE: WAC-01-150-51022

Office: California Service Center

Date: OCT 02 2001

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(iii)

IN BEHALF OF PETITIONER: Self-represented

Identifying case and to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision will be affirmed.

The petitioner in this matter is a record company. The beneficiary is a seven-member musical group. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the "Act") as an entertainment group in a culturally unique field. The petitioner seeks classification of the beneficiary for a six-month United States tour.

The director denied the petition in a decision dated April 30, 2001, and afforded the petitioner thirty-days to submit a brief or additional evidence. As of this date, no response has been received and the record will be considered complete as presently constituted.

Section 101(a)(15)(P)(iii) of the Act, provides for classification of an alien having a foreign residence which the alien has no intention of abandoning who:

(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

8 C.F.R. 214.2(p)(3) provides, in pertinent part, that:

Culturally unique means a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons.

8 C.F.R. 214.2(p)(6)(i) further provides:

(A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.

(B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

8 C.F.R. 214.2(p)(6)(ii) requires the petitioner to submit:

(C) Evidence that all of the performances or presentations will be culturally unique.

The beneficiary is described as a South African vocal group employing traditional styles and instrumentation unique to South Africa. The center director did not dispute the claim that the beneficiary qualifies as a culturally unique entertainment group.

The petitioner submitted an itinerary for the first two months of the six-month tour. The itinerary included performances at a number of commercial popular music events such as jazz festivals, Latin music festivals, and international music festivals.

The director found that in order to qualify for P-3 classification, the regulations require that the entire tour must be comprised of events that are culturally unique as defined in these proceedings. The center director determined that venues such as general popular music festivals were not cultural events to further the understanding of the beneficiary's art form and therefore were not culturally unique events. The director therefore concluded that because the beneficiary's tour would not be limited solely to culturally unique events, it was ineligible for classification under section 101(a)(15)(P)(iii) of the Act.

The petitioner did not submit any rebuttal of the director's findings. The plain language of the regulations is clear in this matter. In order to qualify for P-3 classification, an entertainment group that may be classified as culturally unique may only engage in performances and presentations that satisfy the definition of a culturally unique event. In this case, the commercial music festivals or concerts at which the beneficiary will perform are primarily focused on a specific popular music styles such as "jazz" or "Latin," or are interdisciplinary referred to as "international." It is concluded that these are not culturally unique events intended to further the understanding or development of the beneficiary's particular art form. The fact that the P-3 group's individual performance at such a festival may be culturally unique, does not demonstrate that the commercial or noncommercial program is culturally unique within the meaning of section 101(a)(15)(P)(iii)(II) of the Act. After careful review of the record, the director's decision will be affirmed.

The denial of this petition is without prejudice to the petitioner filing a new petition for classification of the beneficiary under alternate provisions of the Act.

ORDER: The decision dated April 30, 2001 is affirmed.